



RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3625

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Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-
1450 on October 25, 2006.

David G. Parkhurst
David G. Parkhurst, Reg. No. 29,422

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JOHN W. MCMULLEN, ET AL.

Serial No. 10/754,155

Filed: January 9, 2004

For: STORE WITH INTERACTIVE
MERCHANDISING SYSTEM AND
METHOD OF OPERATION

Examiner: Amee A. Shah

Group Art Unit 3625

Docket No. CUSTB 63550

Los Angeles, California 90045

DECLARATION UNDER 37 CFR 1.131

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

We, JOHN W. MCMULLEN and NORMAN C. TRACY, hereby declare the following:

1. We are the inventors of pending claims 1-16, 18-23, 25-41, and 43-46 of the patent application identified above and the subject matter described and claimed therein.
2. Prior to August 22, 2003, as evidenced by a PowerPoint presentation for Project AISLE (copy attached hereto as Exhibit A) developed by us as inventors while employed by the assignee, Custom Building Products, Inc., we conceived, in this country, the concept of a system

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and method for selling products in a home improvement or commercial construction store, including an interactive display with a visual display for disseminating information in response to requests by a user, particularly regarding installing tile or stone, and wherein the information is coordinated with the grouping of the seller's products on the shelves of the store, as is recited in the claims.

3. As is evidenced by the listing of statistics of the PowerPoint presentation attached as the front page of Exhibit A, the date of creation of Exhibit A is prior to August 22, 2003.

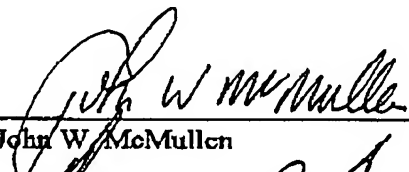
We hereby declare that all statements made herein are true and that all statements made on information are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

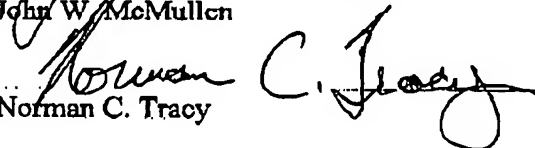
OCTOBER 25 2006

Date

OCTOBER 25 2006

Date



John W. McMullen


Norman C. Tracy

144557.1

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CUSTB63550LEGAL Properties



General | Summary | **Statistics** | Contents | Custom

Created: Tuesday, January 21, 2003 12:32:07 PM

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Accessed: Monday, June 12, 2006 4:27:10 PM

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Revision number: 42

Total editing time: 1415 Minutes

Statistics:

Statistic name	Value
Slides:	32
Paragraphs:	96
Words:	326
Bytes:	47652645
Notes:	0
Hidden slides:	0
Multimedia clips:	0
Presentation format:	On-screen Show

OK

Cancel

Project AISLE

- An
- Integrated
- Selling and
- Learning
- Environment

Project AISLE

■ Principles

- Communicate about projects to make the selection and use materials and tools clear and easy for the consumer
- Support HD associate in-aisle training

Project AISLE

- Four parts working together:
 - ***Project Guides*** – Specific for 4 types projects
 - ***Tile & Stone Installation Answer Center*** –
Interactive kiosk using video, photos, and charts to educate
 - ***Aisle Communication & Organization*** –
 - Physical placement of products
 - Color coded signs for **PREP, SET, GROUT, CARE, TOOLS** and **ANSWERS**
 - **Product Packaging**

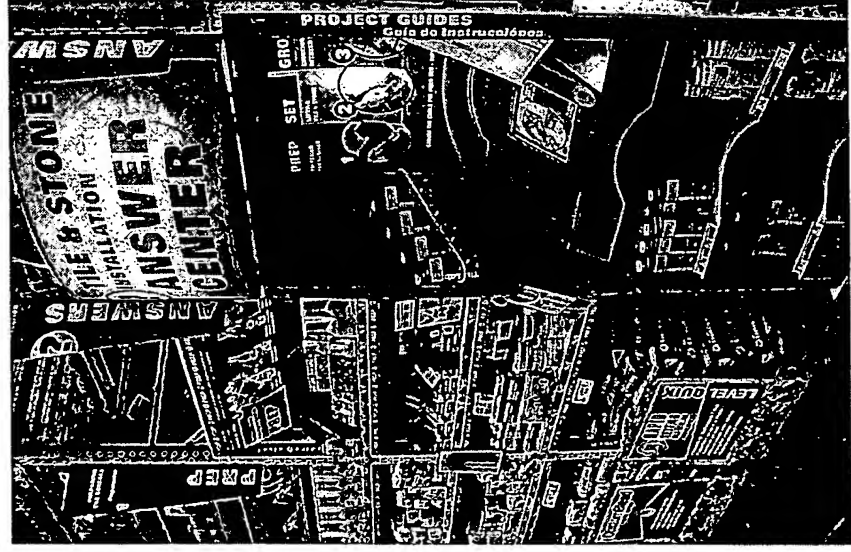
PROJECT TILING A FLOOR Installation Instructions

[illegible]

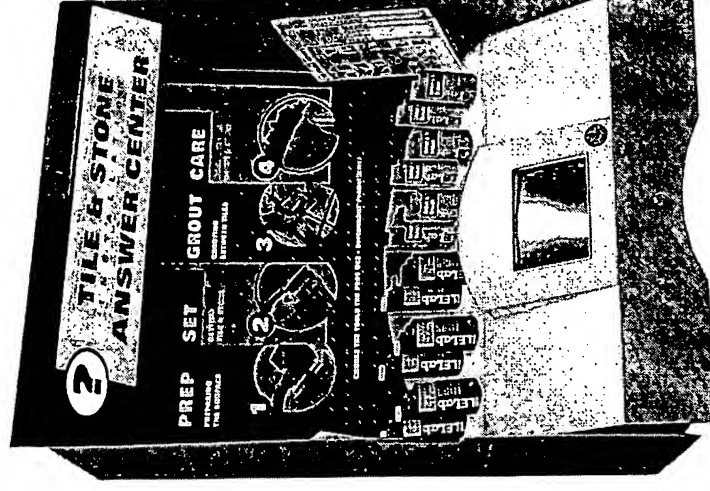
Project AISLE

■ Kiosk

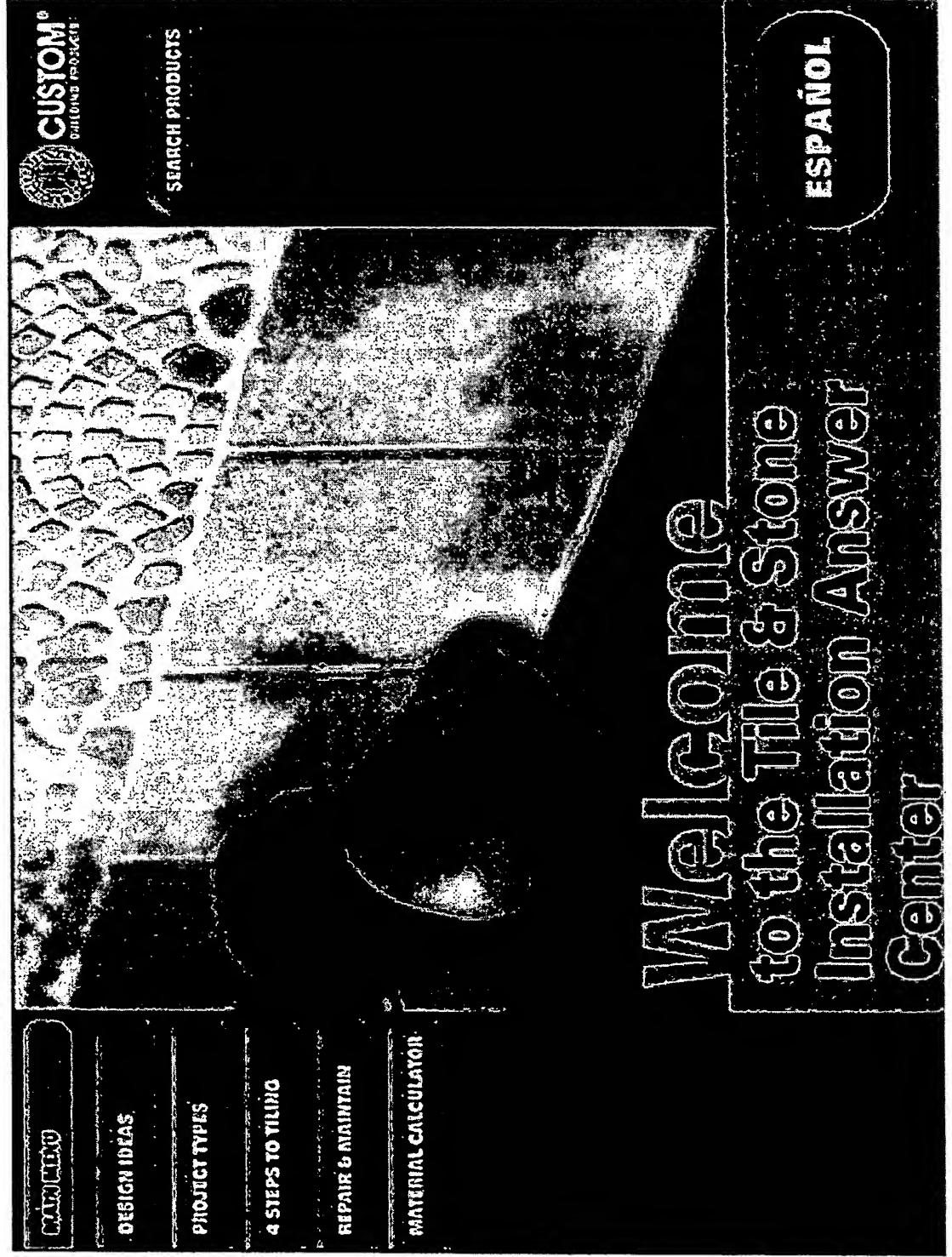
Current



Proposed



Kiosk Sample Screen



Kiosk Sample Screen




Packaging Changes

- Maintain a cohesive Custom family look.
- Clearly communication product function & main benefits.
- Position products to support up-selling.
- Utilize a clean, straightforward design.
- Utilize the ends of the bags for better messaging.
- Distinguish between gray and white.
- Tie into Project AISLE

Old New

○ PREP ○ PREP ○ PREP ○ PREP ○ PREP ○ PREP ○ PREP ○ PREP




WONDERBOARD®

MADE TO LAST

- Easy to score & snap
- Tapeless installation - saves time
- Works great in showers and saunas
- Versatile - use inside and out
- No failures in 35 years
- Lifetime Warranty

Also available in 1/4" thickness



1/2" CEMENT BACKERBOARD

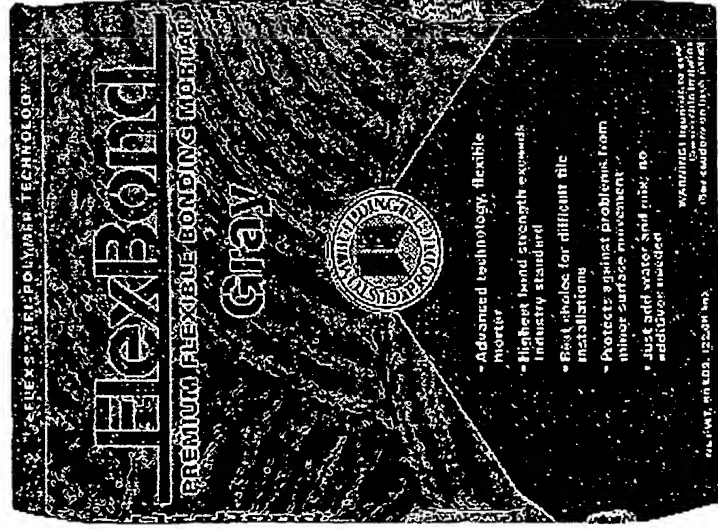
FOR WALLS, FLOORS AND COUNTERTOPS

CUSTOM® BUILDING PRODUCTS 1-800-272-3766

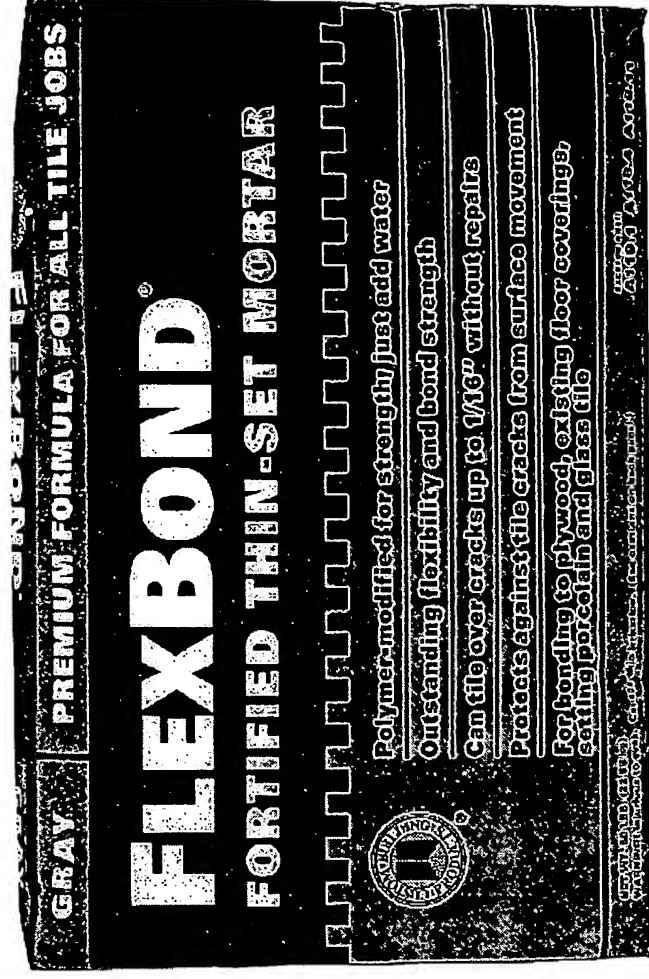
www.custombuildingproducts.com

Packaging - Mortars

Old style

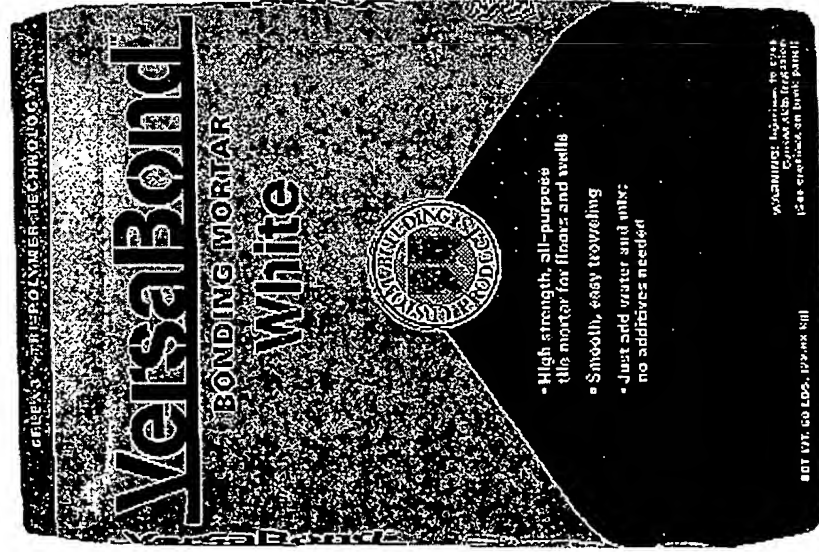


New style

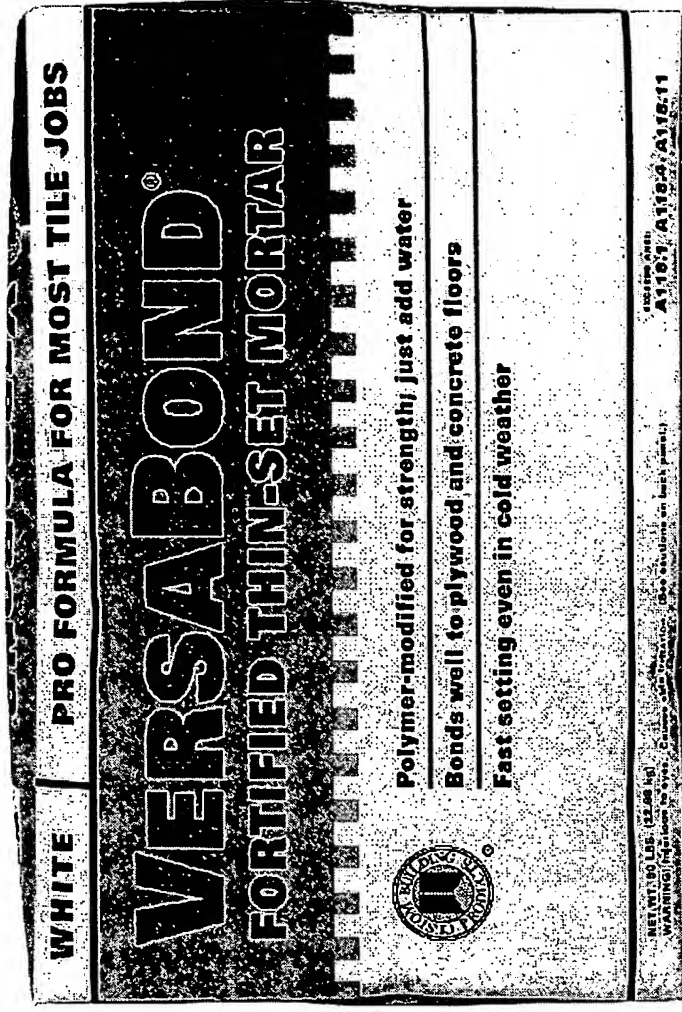


Packaging – Mortars

Old style

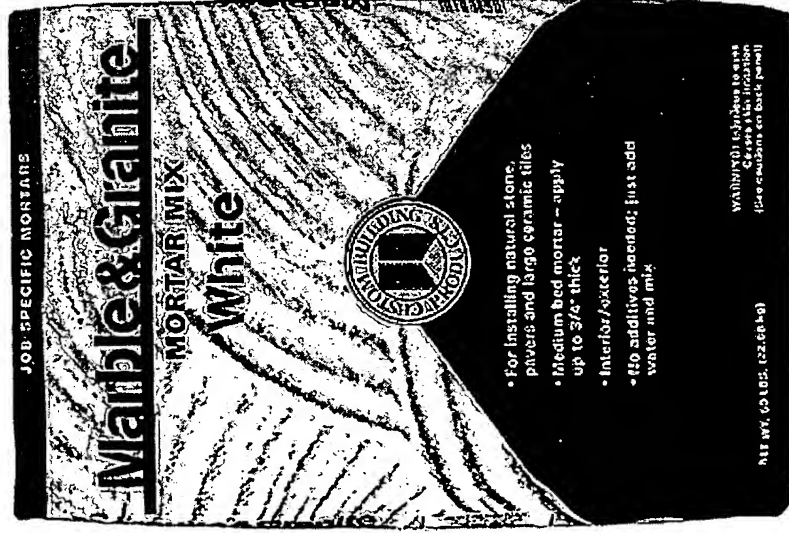


New style

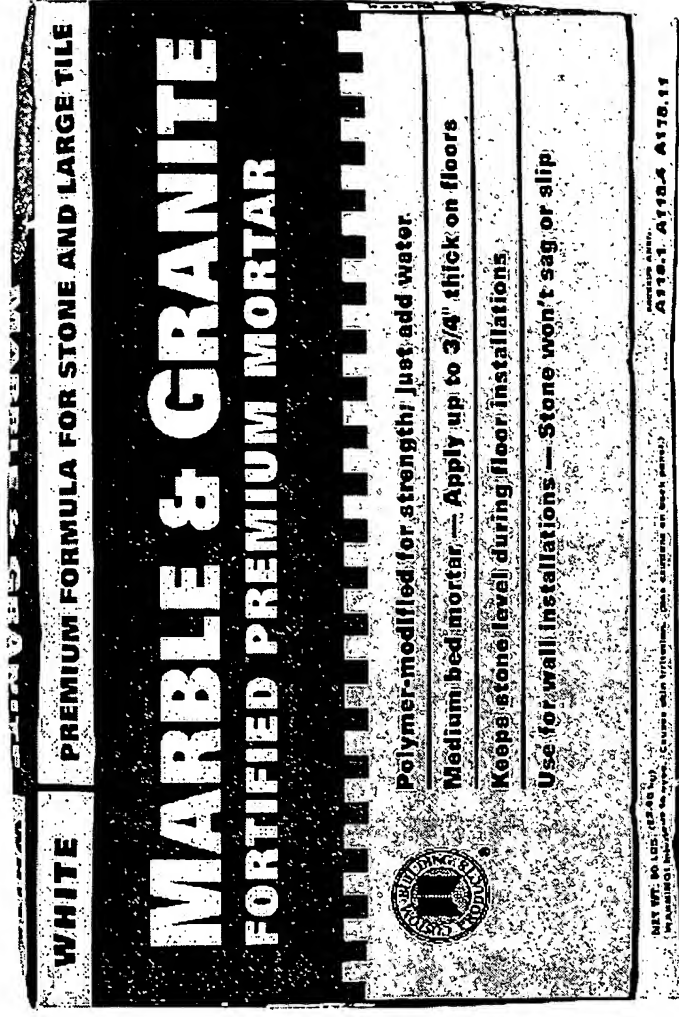


Packaging – Mortars

Old style



New style

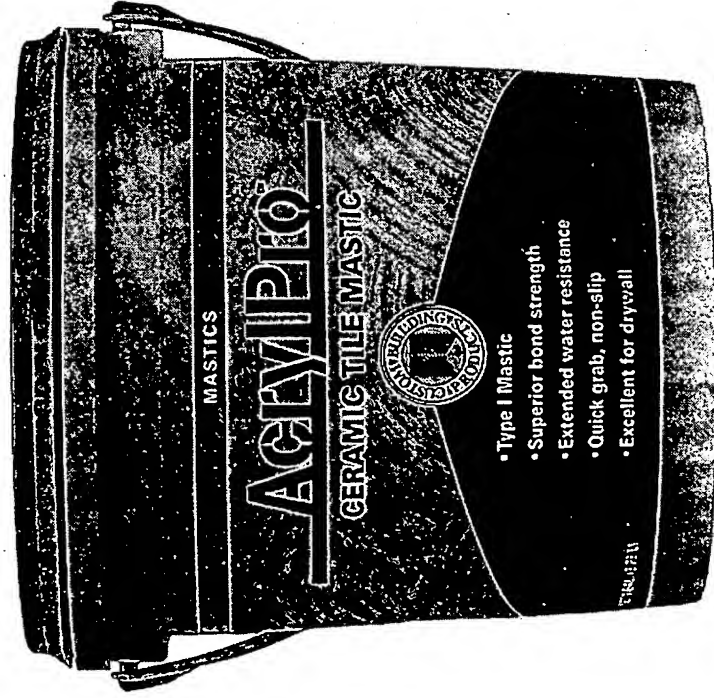


Packaging – Pallet view



Packaging – Adhesives

Old style



New style

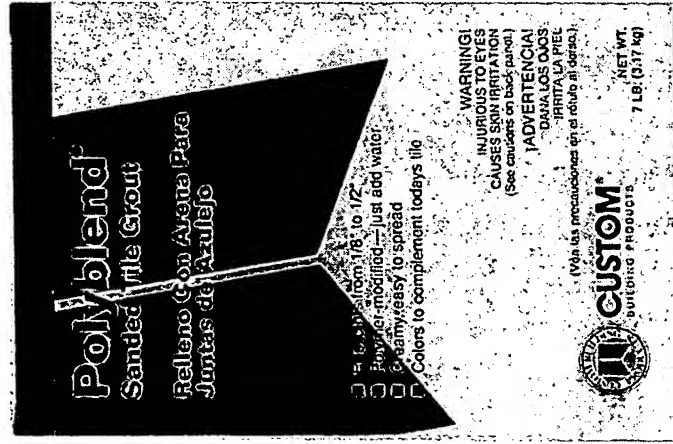


Grout Packages

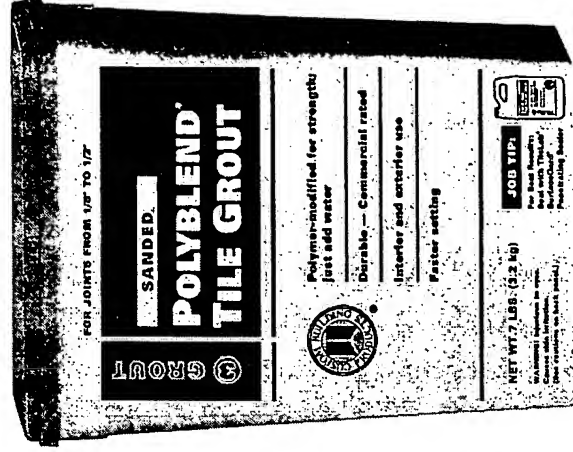
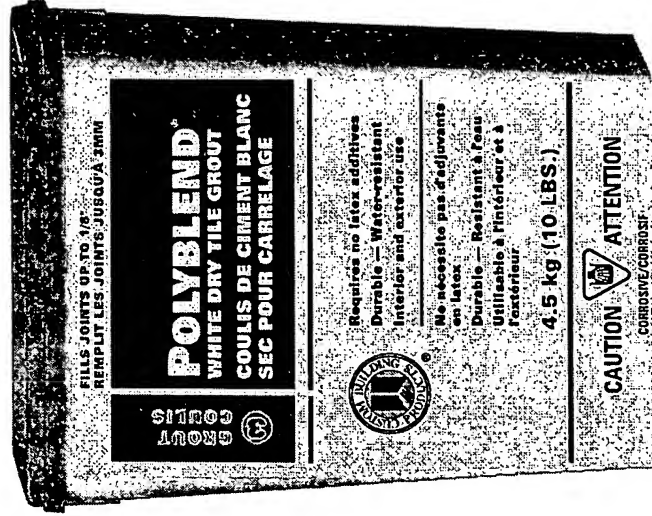
- Create new, innovative package
- Prevent sifting
- Re-useable container
- Tamper evident
- Stackable
- Maintain billboard space
- Waterproof

Packaging — Grout

Old package



New Package

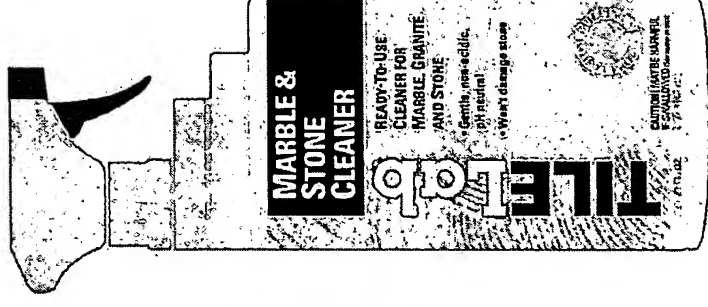
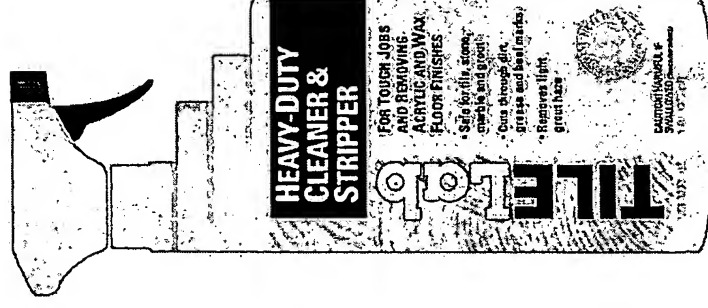
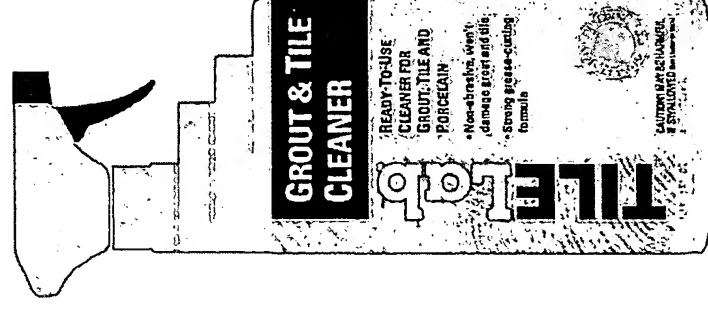


Care – Product Packaging

- Differentiate Stone, Grout & Tile & cross-over products within the line
- Increase emphasis on higher-end products
- Avoid product/ packaging confusion

Packaging – Care

Cleaners - Current



Packaging – Care – Cleaners

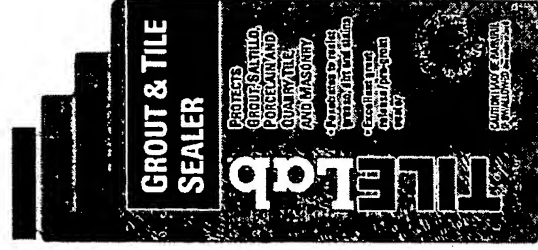
Cleaners – New



(PROPOSED)

Packaging – Care

Penetrating Sealers - Current



Packaging – Care – Cleaners

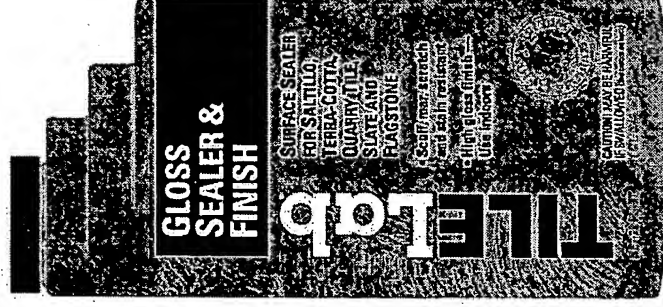
Penetrating Sealers - New



(FUTURE PRODUCT)

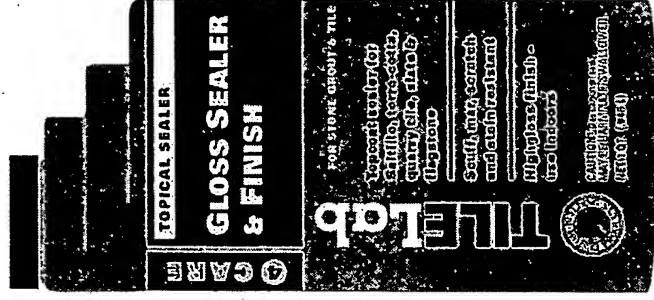
Packaging – Care – Cleaners

Topical Sealers - Current



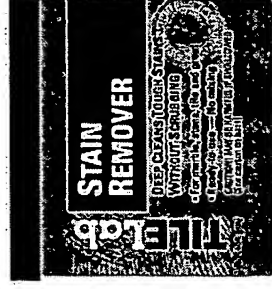
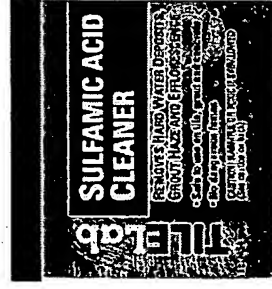
Packaging – Care – Cleaners

Topical Sealers – New



Packaging – Care

Problem Solvers - Current



Packaging – Care

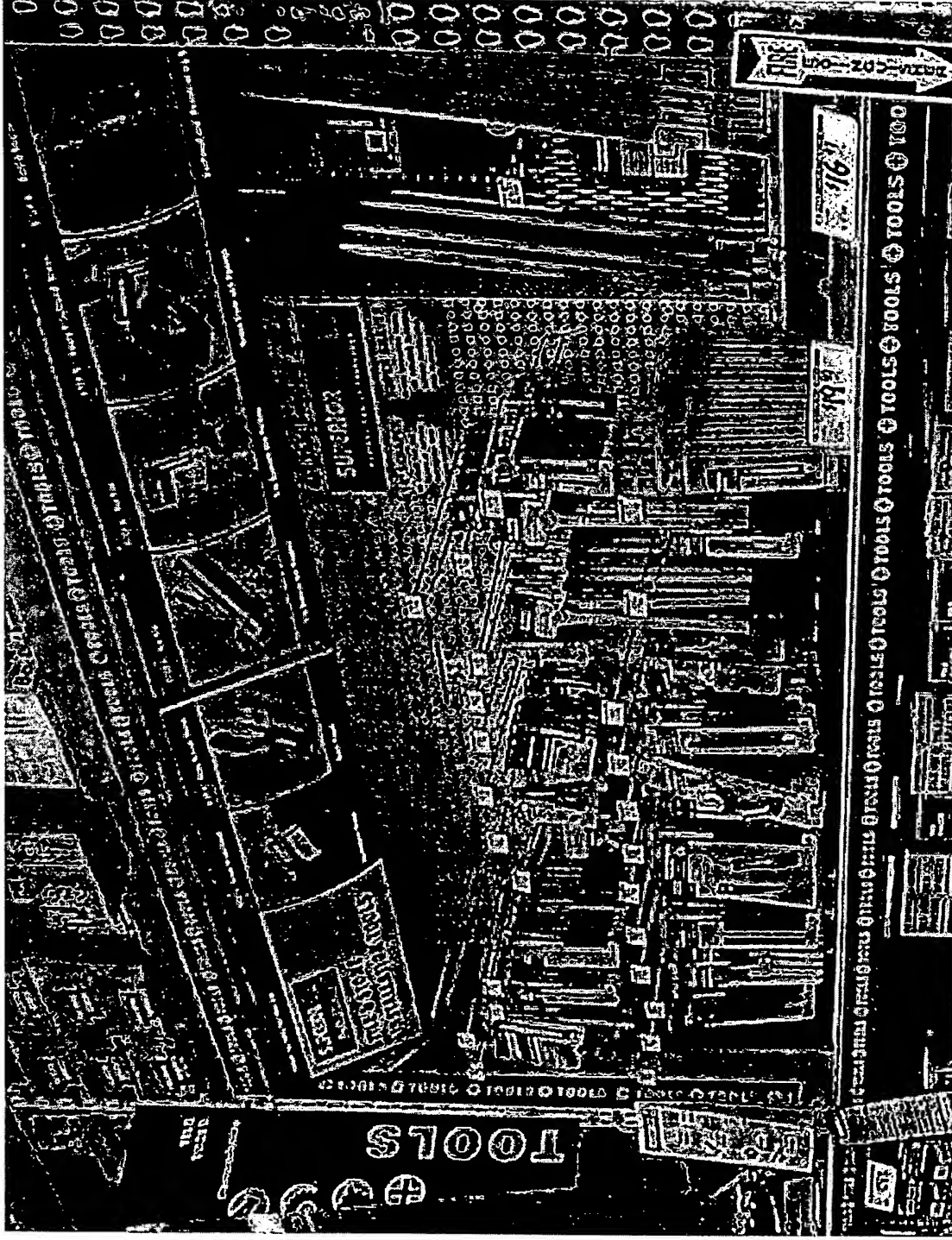
Problem Solvers - New



Tools - Support

- Overheads designed to show the right basic tool for each step a project
- Product Selection supported with Hang cards
- Emphasis on upper quality level ProBilt tools
 - Set at waist level for easy viewing/purchase
 - Packaging changed to yellow accent on ProBilt



Packaging – Tools



Tools - Support

SUPERIORBILT.
PROFESSIONALLY PREFERRED



Tile Cutters
Score and snap all types of tile

Hole Saws
Cuts 1 1/2" holes for standard plumbing fixtures



Tile Nippers
Bite away small pieces of tile

Wet Saws/Diamond Blades
Precision cuts of tile, stone and masonry



Hand Tile Cutters
Score and snap all types of tile




Coping Saw
Cuts tile of all types



SUPERIORBILT.
PROFESSIONALLY PREFERRED

INSTALLATION CHECKLIST
BASIC TOOLS

Backerboard Screws

Notch Trowel

Tile Cutter

Tile Spacers

Spacer Puller

Grout Float

Grout Sponge

Cheesecloth

TO MAKE THE JOB EASIER USE:

Knee Pads

Gloves

Floor Scraper

Margin Trowel

Tile Nippers

Level

OTHER USEFUL TOOLS:

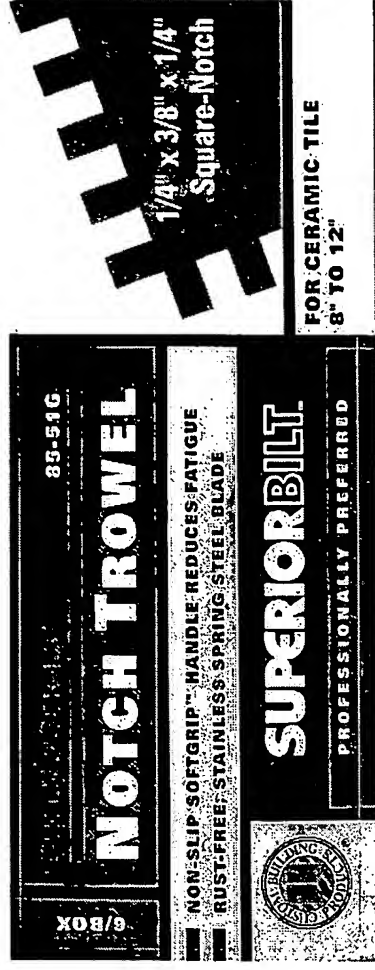
Wet Saw
Diamond Blade
Wet Dry
Grout Saw
Grout Applicator
Grout Bucket
Grout Float
Grout Brush

Packaging — Tools

ProBilt Trowel Label

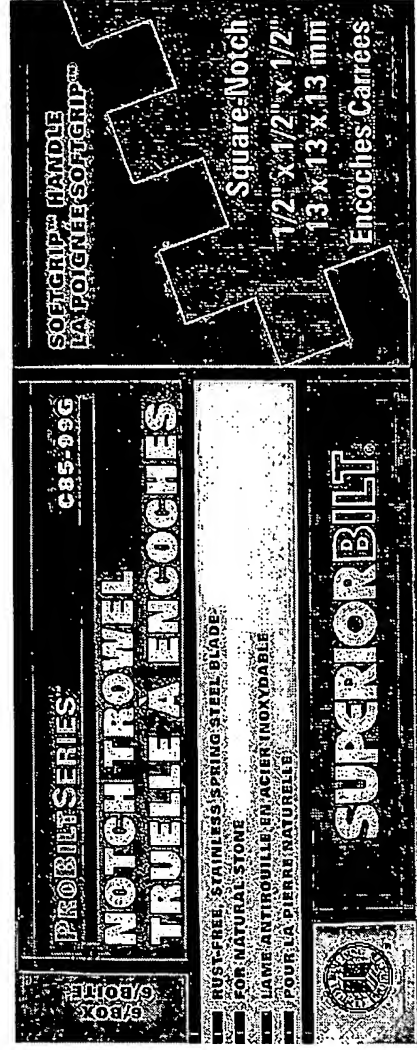
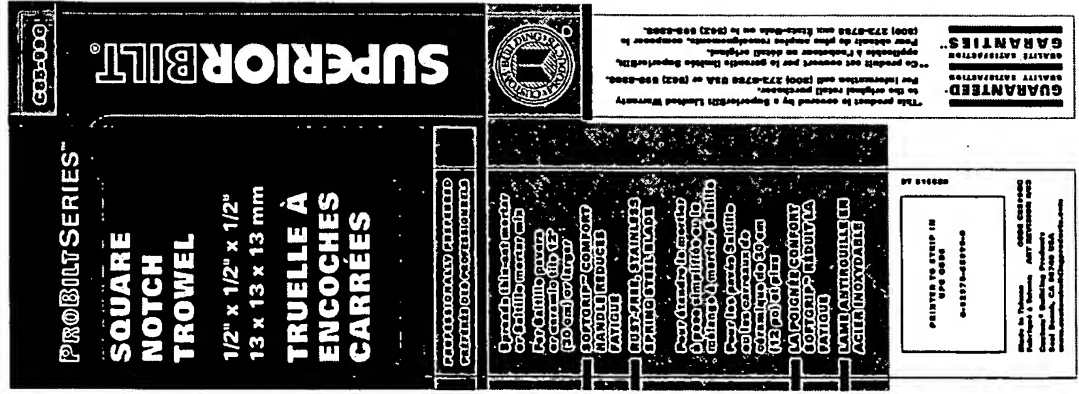


Case Label for Trowel Selection



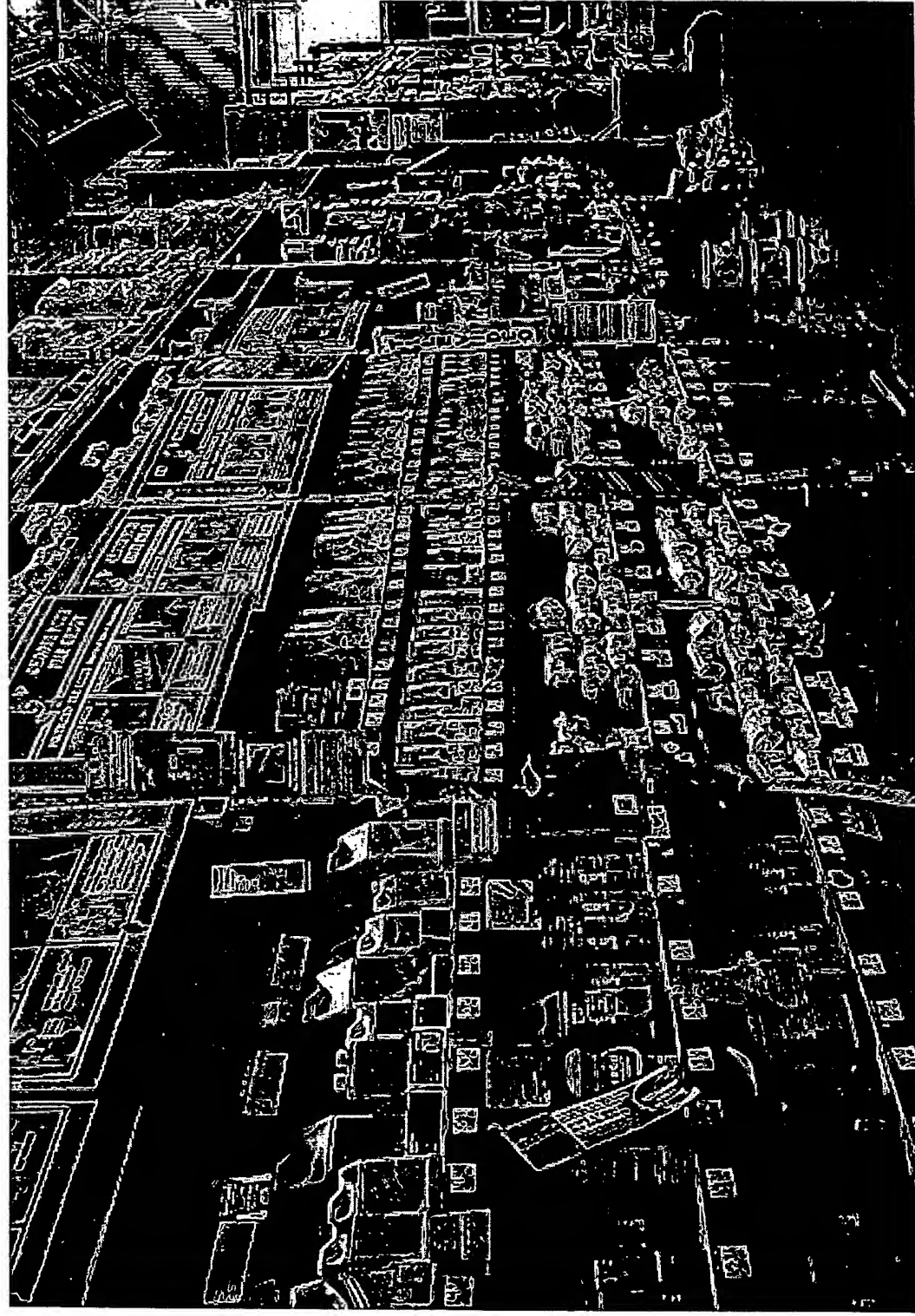
Packaging – Tools

ProBilt Trowel Label



Case Label for Trowel Selection

Existing Store Set



;



David Parkhurst

From: Michele Hill [m_hill@hadw.com]
Sent: Tuesday, August 12, 2003 5:58 PM
To: Beth Scott; Norm Tracy; David Parkhurst
Subject: Workspace Access

Custom Building Kiosk Workspace

Hi David -

As Norm requested, I set you up with access to our client extranet that we use to post files, comps, schedules, etc. You will find here documents relating to the kiosk.

To access visit <http://work.hadw.com> and enter your full email address in the proper field. If you have not logged in before, leave the password field blank and click on New User. You will be prompted to set your own password. Once you have set it you can log in and view the project(s) you have access to.

If you have logged in before but cannot remember your password, enter your email address in the proper field and click on the Lost Your Password link which will allow you to reset your password.

If you have any questions, please let me know.

Thanks!
-Michele

This message comes to you from the Hornall Anderson Workspace.
Please respond using <http://work.hadw.com/?nodeID=33304>

8/13/2003

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Robert W. Fulwider
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Warren L. Patton
(1912-1985)

John M. Lee
(1921-1978)

November 17, 2003

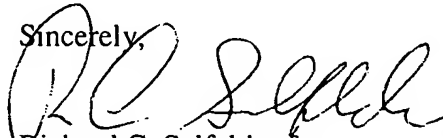
John W. McMullen
Custom Building Products
13001 Seal Beach Boulevard
Seal Beach, CA 90740

Re: Draft Application for: Store with Interactive Kiosk and Method of
Operation
Our Docket: CUSTB-63550

Dear John:

Please find enclosed two copies of the draft application for the above mentioned invention. Please review the application and have Norman Tracy review the application, making redline corrections or comments on the draft applications and return them to us as soon as possible so that we may file them with the Patent Office prior to the January 24, 2004 statutory bar date. Even if you do not have any comments or corrections, please return a copy of the draft application indicating "no comments or corrections." We look forward to receiving the draft applications back so that we may file the application by the January 24, 2004 bar date.

Sincerely,



Richard C. Salfelder for

FULWIDER PATTON LEE & UTECHT, LLP

RCS:mv
Enclosures
32300.1

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(1912-1985)

John M. Lee
(1921-1978)

(310) 242-2674
dparkhurst@fulpat.com

December 29, 2003

Via Federal Express

John W. McMullen
Custom Building Products
13001 Seal Beach Boulevard
Seal Beach, CA 90740

Re: New U.S. Utility Patent Application
Store with Interactive Kiosk and Method of Operation
Our Docket: CUSTB-63550

Dear John:

Enclosed is a final draft of the above-identified application, incorporating comments and corrections to the application by you and Norm Tracy. After you have checked the application for accuracy and completeness, we would appreciate if you and Norm Tracy would sign and date the declaration and power of Attorney as indicated. Also enclosed is an assignment, which should be signed by both of you, and notarized if possible, on the same day as the declaration and power of Attorney is signed. If any corrections are to be made to either of these documents by interlineation, they should be initialed.

Please note that the declaration at the end of the application contains an acknowledgment of the inventor's duty to disclose all information of which the inventor is aware that is material to the examination of the application. This is a continuing duty which does not terminate upon filing of the application. The same duty is imposed on us as attorneys, and on the corporation as assignee of the application. The purpose of the disclosure requirement is to insure that the Patent and Trademark Office has before it all of the prior art that may affect the validity of a patent. This has the effect of strengthening patents that ultimately are granted. Failure to satisfy the disclosure requirement may result in loss of patent rights, as well as other potentially serious consequences.

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John W. McMullen
December 29, 2003
Page 2

Accordingly, if you have not already provided us with all such information, we need it as soon as possible so that we can make an early determination as to its materiality, and so that we can prepare an appropriate statement, if necessary, for filing with the application. For purposes of determining what information you should forward to us, we suggest you consider "material information" to include information relating to any publications, public uses or offers for sale of the invention or anything closely similar to it occurring before the filing of the application. If any such publications are patents, we suggest you consider them material no matter when issued.

As you may be aware, for a variety of reasons even "material information" may ultimately have little or no bearing on the patentability of the invention. For example, if a publication occurred less than a year before the filing date and after completion of the invention, it will not affect patentability. Moreover, an invention often can be distinguished over material information by appropriate argument to the Patent and Trademark Office, or by amendment of the claims.

After the papers have been executed, please return them to us for filing in the United States Patent and Trademark Office. Please remember that the application must be filed in the Patent and Trademark Office within one year of the first public disclosure, public use or offer for sale of the invention and must be filed before any such event if protection in certain foreign countries is desired. Therefore, it is important that the application be executed and returned to us for filing as quickly as possible to ensure an early filing date. We are enclosing a self-addressed Federal Express envelope for your convenience in returning the application, Declaration and Assignment to us. Please call if you have any questions. We look forward to receiving the executed papers back so that we may file the application by the January 24, 2004 bar date.

Sincerely,

FULWIDER PATTON LEE & UTECHT, LLP



David G. Parkhurst

DGP:rvw

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